

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

RODNEY CURTIS HAMRICK,

Petitioner,

v.

Civil Action No. 5:19CV289
(Criminal Action No. 5:91CR56)

UNITED STATES OF AMERICA,

(STAMP)

Respondent.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE AND
GRANTING MOTION FOR VOLUNTARY DISMISSAL

I. Background

The petitioner, Rodney Curtis Hamrick, filed a motion (Civil Action No. 5:19CV289, ECF No. 1; Criminal Action No. 5:91CR56, ECF No. 104)¹ under 28 U.S.C. § 2255 moving this Court to vacate petitioner's sentence in the above-style action.

This civil action was referred to United States Magistrate Judge James P. Mazzone under Local Rule of Prisoner Litigation Procedure 2. Magistrate Judge Mazzone issued a report and recommendation (ECF No. 4/ECF No. 107) recommending that the petitioner's motion be denied and dismissed as an unauthorized second or successive motion. Id. at 5. The petitioner did not file objections to the report and recommendation. Rather, the

¹Unless dual ECF numbers are cited to both the civil and criminal action, all citations to ECF numbers in this memorandum opinion and order refer to Criminal Action No. 5:91CR56.

petitioner filed a "motion to voluntarily dismiss civil action."
ECF No. 110.

For the following reasons, this Court affirms and adopts the report and recommendation in its entirety and grants the motion for voluntary dismissal.

II. Applicable Law

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. As to findings where no objections were made, such findings and recommendations will be upheld unless they are "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A). Because the petitioner did not file any objections to the report and recommendation, the magistrate judge's findings and recommendations will be upheld unless they are "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A).

III. Discussion

This Court, after review, finds no clear error in the determinations of the magistrate judge and adopts and affirms the report and recommendation (ECF No. 4/ECF No. 107) in its entirety.

In his report and recommendation, the magistrate judge determined that the current § 2255 motion is a second or successive motion and further found that the petitioner did not obtain authorization from the Fourth Circuit to file a successive § 2255

motion. As the magistrate judge correctly noted, in the instant case, this Court is without authority to hear petitioner's current federal habeas petition. Therefore, this Court finds that the magistrate judge properly concluded that petitioner's motion must be denied and dismissed.

Further, this Court finds that the petitioner was properly advised by the magistrate judge that failure to timely object to the report and recommendation in this action would result in a waiver of appellate rights. Because the petitioner has failed to object, he has waived his right to seek appellate review of this matter. See Wright v. Collins, 766 F.2d 841, 844-45 (4th Cir. 1985).

Upon review, this Court finds no clear error in the determinations of the magistrate judge and thus upholds his recommendation. Additionally, upon review of the petitioner's motion for voluntary dismissal, this Court finds that it is appropriate to grant the motion and dismiss this civil action.

IV. Conclusion

For the reasons set forth above, the report and recommendation of the magistrate judge (ECF No. 4/ECF No. 107) is AFFIRMED and ADOPTED in its entirety. The petitioner's motion for a writ of habeas corpus pursuant to 28 U.S.C. § 2255 (ECF No. 1/ECF No. 104) is DENIED. The petitioner's motion for voluntary dismissal (ECF No.

110) is GRANTED. It is further ORDERED that this case be DISMISSED and STRICKEN from the active docket of this Court.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the petitioner by certified mail to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: October 28, 2019

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE